

**U.S. Department of Labor**  
Occupational Safety and Health Administration

**Inspection Number:** 984234  
**Inspection Date(s):** 07/09/2014 - 07/09/2014  
**Issuance Date:** 01/07/2015



**Citation and Notification of Penalty**

**Company Name:** Northern Excavating Company, Inc.  
**Inspection Site:** Corner of First Street East and Frontage Road, Ross, ND 58776

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**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees:

(a) On or about July 9, 2014, for the employee repairing a water valve in an unprotected trench approximately 8.5 feet deep without an adequate means of egress at the corner of First Street East and Frontage Road, Ross, ND.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Sample Abatement Certification Letter").

Date By Which Violation Must be Abated: 01/12/2015  
Proposed Penalty: \$7000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



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**Citation 2 Item 1** Type of Violation: **Willful**

29 CFR 1926.651(k)(2): The employer is failing to ensure that each exposed employee is removed from a hazardous area until the necessary precautions have been taken to ensure their safety, where a competent person finds evidence of a situation that could result in possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions:

- (a) This violation was recently observed at the corner of First Street East and Frontage Road, Ross, North Dakota, where the employer failed to remove the employee repairing a water valve in a trench approximately 8.5 feet deep, without adequate protective systems, from a hazardous condition.

Abatement Note: To abate this violation, the employer must ensure at all of its workplaces that all employees engaged in trenching activities are removed from the trench when evidence is found of a hazardous condition and that no employee reenters the trench until the hazardous condition has been eliminated. Methods of abatement include competent persons conducting daily inspections of excavations and adjacent areas, and installation of protective systems for a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions.

Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including the names and qualifications of the persons it is designating as competent, and a description of their responsibilities.

Inspections shall be made by a competent person, shall be documented, and shall be conducted in the following frequency and conditions: daily and before the start of each shift; as dictated by the work being done in the trench; after every rainstorm; after other events that could increase hazards, e.g. snowstorm, windstorm, thaw, earthquake, etc.; when fissures, tension cracks, sloughing, undercutting, water seepage, bulging at the bottom, or other similar conditions occur; when there is a change in the size, location, or placement of the spoil pile; and when there is any indication of change or movement in adjacent structures.

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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Pursuant to 29 CFR 1903.19(c), the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from cave-ins. Abatement certification and documentation are required for this item (see enclosed Sample Abatement Certification Letter).

The employer shall cease and desist from violating the requirements of 29 CFR 651, Specific excavation requirements.

Pursuant to 29 CFR 1926.21(b)(2), the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

<b>Date By Which Violation Must be Abated:</b>	<b>01/12/2015</b>
<b>Proposed Penalty:</b>	<b>\$70000.00</b>

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## Citation and Notification of Penalty

**Company Name:** Northern Excavating Company, Inc.

**Inspection Site:** Corner of First Street East and Frontage Road, Ross, ND 58776

### Citation 2 Item 2 Type of Violation: **Willful**

29 CFR 1926.652(a)(1): The employer does not protect each employee in its trenches by properly sloping the trenches or using appropriate protective systems in accordance with paragraph (b) or (c) of 29 CFR 1926.652:

(a) At various locations, the employer is failing to ensure that each employee in an excavation is protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c). This violation was recently observed on or about July 9, 2014, for the employee exposed to cave-in hazards while repairing a water valve in a trench approximately 8.5 feet deep with an unprotected vertical sidewall, evidence of ground water and sloughing soil at the corner of First Street East and Frontage Road, Ross, ND.

Abatement Note: To abate this violation, the employer must ensure that its trenches are properly sloped or equipped with appropriate protective systems, and that no employees enter trenches until this protection is provided. Methods of abatement include: benching, sloping, shoring, shielding, or other adequate protective systems.

Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including the names and qualifications of the persons it is designating as competent, and a description of their responsibilities.

Inspections shall be made by a competent person, shall be documented, and shall be conducted in the following frequency and conditions: daily and before the start of each shift; as dictated by the work being done in the trench; after every rainstorm; after other events that could increase hazards, e.g. snowstorm, windstorm, thaw, earthquake, etc.; when fissures, tension cracks, sloughing, undercutting, water seepage, bulging at the bottom, or other similar conditions occur; when there is a change in the size, location, or placement of the spoil pile; and when there is any indication of change or movement in adjacent structures.

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Pursuant to 29 CFR 1903.19(c), the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from cave-ins. Abatement certification and documentation are required for this item (see enclosed Sample Abatement Certification Letter).

The employer shall cease and desist from violating the requirements of 29 CFR 652, Requirements for Protective Systems.

Pursuant to 29 CFR 1926.21(b)(2), the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

Date By Which Violation Must be Abated: 01/12/2015  
Proposed Penalty: \$70000.00

A handwritten signature in black ink, appearing to read "Eric R. Brooks", written over a horizontal line.

**Eric R. Brooks**  
Area Director

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